TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 217.

FLORENCE AUDUBON AND JOHN W. HULSE, ASSIGNEE OF W. H. SMITH, APPELLANTS,

vs.

ROBERT W. SHUFELDT.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 3, 1900.

(17,661.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1900.

a Supreme Court of the District of Columbia.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. No. 34. In Bankruptcy.

UNITED STATES OF AMERICA, *District of Columbia*, } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 Original.

Debtor's Petition.

Filed Apr. 5, 1899.

In the Supreme Court of the District of Columbia, Holding a Court in Bankruptcy.

The petition of Robert W. Shufeldt, of Washington, District of Columbia, a physician, respectfully represents:
(State occupation.)
That he has had his principal place of business at 2508 University
(or has resided, or has had his domicil.)
place for the greater portion of six months next immediately preceding the filing of this petition at No. 2508 University place, within said judicial district; that he owes debts, which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

2 Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

ROBERT W. SHUFELDT, *Petitioner.*

DEWEES & DEWEES, *Attorney.*

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, Robert W. Shufeldt, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

R. W. SHUFELDT, *Petitioner.*

Subscribed and sworn to before me this 5th day of April, A. D. 1899, at 10.12 a. m.

J. R. YOUNG, *Clk.*
By R. J. MEIGS, JR., *Ass't Clk.*

(Endorsed:) Docket No. 34. In the matter of Robert W. Shufeldt, bankrupt. Filed 10.12 o'clock a. m. this 5th day of April, 1899. J. R. Young, clerk, by R. J. Meigs, Jr., ass't cl'k.

3 *Adjudication of Bankruptcy.*

Filed Apr. 5, 1899.

In the District Court of the United States for the Supreme Court, District of Columbia.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. No. 34. In Bankruptcy.

At Washington city, in said District, on the 5th day of April, A. D. 1899, before the Honorable W. S. Cox, judge of said court in bankruptcy, the petition of Robert W. Shufeldt that he, Robert W. Shufeldt, be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Robert W. Shufeldt is hereby declared and adjudged a bankrupt accordingly.

W. S. COX, *J.*

Order of Reference.

Filed Apr. 5, 1899.

In the District Court of the United States for the — District of —.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. No. 34. In Bankruptcy.

It is ordered that said matter be referred to Edward S. Mc-
4 Calmont, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts, and that the said Robert W. Shufeldt shall attend before said referee on the 15th day of April, 1899, at Washington, D. C., and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said bankruptcy.

W. S. COX, *J.*

Petition for Discharge.

Filed Aug. 8, 1899.

In the Supreme Court of the District of Columbia as a Court of Bankruptcy.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. No. 34, Docket No. —.

To the Honorable Charles C. Cole, a justice holding said court:

—— ——, of the District of Columbia, respectfully represents that on the 8th day of August, 1899, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from said discharge.

Dated this 8th day of August, A. D. 1899.

R. W. SHUFELDT, *Bankrupt.*

5 Filed Aug. 8, 1899.

No. 34. Bankruptcy.

In the Supreme Court of the District of Columbia as a Court of Bankruptcy.

In the Matter of ROBERT W. SHUFELDT, a Bankrupt.

It appearing to the court that by inadvertency the notice of the time and place of the hearing on the petition for the discharge filed herein, as required by the order of this honorable court passed on the 2d day of August, A. D. 1899, has not been published or mailed to the debtors of said bankrupt, and that there is not now time sufficient before the day fixed for said hearing for the publication and mailing of said notices as required by law, it is, on motion of the attorneys of said bankrupt, on this the 8th day of August, A. D. 1899, ordered that the time fixed by said order for said hearing is hereby altered to the 21st day of August, A. D. 1899, at ten o'clock of the forenoon of said day, before this honorable court, and that the referee, besides causing publication thereof to be made in accordance to and with said former order, shall send by mail to all known creditors notice of the filing of said petition of discharge and of the time and place fixed for a hearing thereon, addressed to them at their places of residence, as stated.

HARRY M. CLABAUGH, *Justice.*

Test: —— ——, *Clerk.*

DEWEES & DEWEES,
Solicitors Pet.

6 *Objections to Discharge.*

Filed Aug. 25, 1899.

In the District Court of the United States for the District of Columbia.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. In Bankruptcy. No. 34.

John W. Hulse, of the District of Columbia, assignee of scheduled creditor, W. H. Smith, a party interested in the estate of said Robert W. Shufeldt, bankrupt, by Webb and Webb, his attorneys, does hereby oppose the granting to him of a discharge from his debts, and for grounds of such opposition does file the following specifications:

1. Because said action of the said Shufeldt is fraudulent and not within the intention of the bankruptcy act of 1898.

2. Because said bankrupt is concealing assets.

3. Because the amount of the debts said bankrupt is attempting to be discharged from is less than one thousand dollars ($1,000).

WEBB & WEBB,
Attorneys for Hulse.

7 *Findings of Facts.*

Filed Jan. 9, 1900.

Robert Wilson Shufeldt on April 5th, 1899, filed a petition in bankruptcy, alleging that he was indebted to the amount of $4,538.33, and that he had no assets which were not exempt under the law.

The debts he sought release from were the following:

Secured Debts.

Washington National Building and Loan Association...	$3,200.00

Unsecured Debts.

Florence Audubon	$800.00	
Wm. H. Smith, taking testimony	150.00	
Lewis J. Yeager, attorney's fee	150.00	
Parker, Bridget & Co., clothes	18.00	
Saks & Co., clothes	74.00	
W. B. Moses & Son, furniture	20.00	
W. J. Zeh, coal	23.00	
Waters & Son	57.03	
William Walker	28.30	
G. A. Gude, meat	18.00	
		1,338.33
Total		$4,538.33

It appeared from the evidence taken in this case that the said Robert W. Shufeldt was a surgeon with the rank of captain in the United States Army, on the retired list, and had been such for several years prior to the filing of this petition, and that he was in receipt of a salary of $175.00 per month, his pay as such retired officer.

That the debt of $3,200.00 was the debt of himself and wife secured on property situated in Takoma Park, in Montgomery county, State of Maryland, and conveyed to said wife by him in March, 1898, without consideration.

That the debt of $800.00 represented arrears of alimony granted to his former wife, the appellant Florence Audubon, under a decree of the circuit court of Montgomery county, Maryland, passed on the 25th day of February, 1898, directing said Shufeldt to pay alimony to her at the rate of $50.00 per month, beginning April 1st, 1898. No part of said alimony has been paid.

That said Shufeldt left Montgomery county on or about March 1st, 1898, and took up his residence in the city of Washington, District of Columbia.

That a suit in equity has been instituted in the supreme court of the District of Columbia to enforce the decree of the said circuit court for Montgomery county and make said Shufeldt pay the said alimony in arrears, which suit is still pending.

That the debt of $150 to William H. Smith was a promissory note given for taking testimony in the divorce suit (case), above referred to, under a commission from said circuit court for Montgomery county, and that said note had been duly assigned to J. W. Hulse prior to the filing of this petition in bankruptcy.

That the debt of $150 to L. J. Yaeger was for professional services rendered in the District of Columbia in the equity suit aforesaid.

That the rest of said debts were contracted for supplies furnished him and his family prior to the filing of the said petition in bankruptcy. It further appears that after Robert W. Shufeldt filed his application in bankruptcy in this court the complainant filed herein her claim for the said $800, being the arrears of alimony claimed to be then due by him under the decree of the circuit court of Montgomery county, describing it as "a debt" due by him to her. The claim was voted at the meeting of creditors for the election of a trustee.

Subsequently a memorandum was filed in behalf of Mrs. Audubon directing the withdrawal of her said claim, but no order of the court to that effect was passed.

A motion was then made in this court to refuse Shufeldt final discharge, because if the $800 claim is to be considered as withdrawn, the amount of the unsecured debts returned in the schedules ($1,338.32) would be reduced below $1,000, which, it is averred, was insufficient to give this court jurisdiction to award his discharge; but sec. 4 (*b*) referred to has no application except to the cases of *involuntary bankrupts*, while the present case is one of a *voluntary* application.

The further point is made that the claim for alimony was not a

provable debt under the bankrupt act, and that it should be excepted especially from the list of debts, for which a discharge might be given, and otherwise that no discharge should be granted.

This point was fully argued and considered by the court, and all authorities accessible and text books have been examined upon the subject.

Conclusions of Law.

It is undoubtedly true that the decree awarding alimony does not *create an ordinary debt* in the sense of a judgment or decree enforcing a civil contract.

The husband upon marriage became charged with a *duty* of the highest character arising out of the *marital relation itself*, which was enforce-able during marriage. The propriety of compelling its enforcement is based upon the highest public considerations, as well as upon the needs of the wife.

After a divorce, where no blame is chargeable against the wife, the duty remains, and the obligation to the wife personally as well as to the public is greatly strengthened, since such support may be the only barrier between the wife and starvation or misconduct.

But high as this duty is and severe as may be the methods by which it is enforced, those methods have their limitations, which do not apply to the collection of a common money obligation. Ordinarily a decree or judgment is collectible within the period *fixed by the statute of limitations.*

But the courts of equity refuse to compel payment of arrears of alimony *beyond a year* previous to the application unless a satisfactory explanation appears.

2 Bish., Marr. & Div., par. 1098.

The reasons for this innovation upon the statutes of limitations are that the allowance is given originally for the support of the wife *from year to year*, and if she has kept silent during a year the court would rather assume a condonation on her part or that she had managed to obtain a support during that period than her imprisoning the father of her children for these long-continuing arrears without the husband having had an opportuity or complaint presented by her to show such a condition of his faculties as would have induced the court to reduce the allowance if the complaint had been made or suspend its collection entirely for a certain time.

Again, although no court can reduce or enlarge an ordinary decree or judgment by a dollar, yet the equity judge may modify the order for alimony in either direction or revoke it altogether.

The conduct or the laches of either party may justly, I think, as well be considered when the wife's application takes the form of resisting the discharge of her husband as a bankrupt as in any other of the particulars referred to.

The decisions upon the questions are conflicting, but I am well satisfied that the ruling of Judge Evans reported in 94 Federal Reporter of May 13, 1899, *In re* Houston, in the district court of Kentucky, is correct, that a judgment in a divorce proceeding requiring

the defendant to pay alimony in instalments is a provable debt against the defendant's estate in bankruptcy as to all instalments that have accrued up to the date of the adjudication, and will
11 be released by the discharge of the bankrupt.

The more recent decisions upon the point are in accord with this ruling. The most recent I have seen is that of Kohlsaat, J., in the U. S. district court, northern district of Illinois, in the matter of Challoner, reported in the National Bankruptcy Laws and Reports of 1 January, 1900, p. 105.

Without going further into the question, I shall overrule the objection to the petitioner's discharge and pass an order granting his final discharge.

My opinion is that the arrears of alimony *which had accrued against the* bankrupt up to the time *of the adjudication* do constitute a provable debt in the sense of the act of 1898, but that the discharge cannot affect any instalments accruing subsequent to the adjudication.

A. B. HAGNER, *Justice.*

12 *Discharge.*

Filed Jan. 9, 1900.

In the Supreme Court of the District of Columbia as a Court of Bankruptcy.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. No. 34, Doc. —.

Whereas Robert W. Shufeldt, of the District of Columbia, has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore, this 9th day of January, A. D. 1900, ordered that said Robert W. Shufeldt be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 5th day of April, A. D. 1899, on which day the petition for adjudication was filed by (against) him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

A. B. HAGNER, *Justice.*

Attest:

—— ——, *Clerk,*

By —— ——, *Assistant Clerk.*

Duplicate.

13 *Order Allowing Appeal.*

Filed Feb. 8, 1900.

In the District Court of the United States for the District of Columbia.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. In Bankruptcy. No. 34.

On motion of Webb and Webb, attorneys for the creditors, Florence Audubon and John W. Hulse, assignee of W. H. Smith, in the above-entitled cause, it is by the court this 8th day of February, A. D. 1900, ordered that said creditors be allowed to appeal to the Supreme Court of the United States on giving bond in the sum of five hundred dollars ($500), conditioned for the payment of all costs.

A. B. HAGNER, *Justice.*

14 *Appeal Bond.*

Filed Feb. 8, 1900.

In the District Court of the United States for the District of Columbia.

In the Matter of ROBERT W. SHUFELDT, Bankrupt. In Bankruptcy. No. 34.

Know all men by these presents that we, Florence Audubon and John W. Hulse, as principals, and Lisle S. Lipscomb, as surety, are held and firmly bound unto Robert W. Shufeldt, his heirs, executors, or assigns, in the full and just sum of five hundred dollars ($500), to be paid to the said Robert W. Shufeldt, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of January, one thousand nine hundred.

Whereas the above Florence Audubon and John W. Hulse have noted an appeal to the Supreme Court of the United States to reverse the decision rendered in the above-entitled suit, and a citation directed to said Robert W. Shufeldt, citing and admonishing him to be and appear in the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, therefore, the condition of this obligation is such that if the said Florence Audubon and John W. Hulse shall prosecute
15 their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation

shall be void; otherwise the same shall remain in full force and virtue.

FLORENCE AUDUBON. [SEAL.]
JOHN W. HULSE. [SEAL.]
LISLE S. LIPSCOMB. [SEAL.]

Witnesses:
W. H. SHELDON.

As to Hulse and Lipscomb:
CHARLES H. PARKMAN.

Approved Feb'y 8th. 1900.
A. B. HAGNER, *Justice.*

16 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 15, inclusive, contain a true and correct transcript of the record and proceedings had in said court, as provided in sec. 3, rule 36, of the general orders in bankruptcy adopted and established by the Supreme Court of the United States, in cause No. 34, bankruptcy, in the matter of Robert W. Shufeldt, bankrupt, as the same remain upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 1st day of March, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: File No., 17,661. District of Columbia supreme court. Term No., 217. Florence Audubon and John W. Hulse, assignee of W. H. Smith, appellants, *vs.* Robert W. Shufeldt. Filed March 3d, 1900.